

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEITH I. SCHORR and SUSAN SCHORR,
In their own right and as personal
representatives of the Estate of RYAN K.
SCHORR,

Plaintiffs,

vs.

WEST SHORE REGIONAL POLICE
COMMISSION, HOWARD DOUGHERTY,
CUMBERLAND COUNTY, ROBERT
GORIL and HOLY SPIRIT HOSPITAL,

Defendants.

No. 1:CV-01-0930

The Honorable Yvette Kane

FILED
HARRISBURG, PA

MAY 07 2003

YVETTE KANE, CLERK
FOR 519

DEFENDANTS WEST SHORE REGIONAL POLICE COMMISSION AND
CHIEF HOWARD DOUGHERTY'S BRIEF IN SUPPORT OF THEIR MOTION IN
LIMINE TO PRECLUDE THE PROPOSED EXPERT OPINIONS AND TESTIMONY
OF DR. SUZANNE VOGEL-SCIBILIA

I. INTRODUCTION

Defendants West Shore Regional Police Commission ("WSPD") and Chief Howard
Dougherty submit this brief in support of their Motion in Limine to Preclude the Proposed
Expert Opinions and Testimony of Dr. Suzanne Vogel-Scibilia.

II. PROCEDURAL HISTORY

On May 25, 2000, Plaintiffs commenced this instant lawsuit. In their First Amended Complaint ("Complaint"), Plaintiffs asserted claims against the WSPD and Chief Dougherty under Section 1983 (Count I), Section 504 of the Rehabilitation Act (Count IV), Title II of the ADA (Count V), and Pennsylvania law for wrongful death and survival (Counts VI and VII).

On September 5, 2002, the parties filed a Stipulation of Partial Dismissal, stipulating to the dismissal of the claims raised under Section 504 of the Rehabilitation Act in Count IV of the Complaint.

On February 10, 2003, the Court granted Plaintiffs' unopposed motion to dismiss the ADA claim against Chief Dougherty raised in Count V and the wrongful death and survival claims against both the WSPD and Chief Dougherty raised in Counts VI and VII.

On February 28, 2003, the WSPD and Chief Dougherty filed a motion for summary judgment. This motion is currently pending before this Court.

III. STATEMENT OF FACTS

A. The Incident

For a large part of his life, Ryan Schorr ("decedent") suffered from a significant psychiatric illness, which severely disrupted his ability to carry out his daily life activities. See Compl. ¶¶12-13. In November 2000, decedent's psychiatric condition worsened such that his family and friends believed that a psychiatric evaluation was necessary. See Compl. ¶¶15-16. On November 18, 2000, after consultation with decedent's mother, decedent's housemate completed an application at the Crisis Intervention Unit of Holy Spirit Hospital to have decedent involuntarily committed pursuant to section 302 of the Pennsylvania Mental Health Procedures Act. See Compl. ¶¶17-18.

A crisis intervention worker evaluated the application, determined that decedent presented a clear and present danger to himself or others and caused an order to be issued for decedent's involuntary commitment. See Compl. ¶19. After obtaining the order and corresponding warrant, Officers Gary Berresford and Harry Hart of the WSPD went to decedent's house and transported him to Holy Spirit Hospital, where he was placed in a high security room. See Compl. ¶21. When a crisis intervention worker entered decedent's hospital room, he rushed past her and left the hospital. See Compl. ¶23.

Approximately two hours later, decedent returned to his home. See Compl. ¶24. Officers Berresford and Hart were contacted and instructed to return decedent to the hospital. See Compl. ¶25. After arriving at decedent's house, the police officers entered through a sliding glass door and found decedent in the doorway of his bedroom dressed only in a long robe. See Compl. ¶¶29-30. A physical struggle ensued during which Officer Hart fired his service revolver and killed decedent. See Compl. ¶¶31-33.

B. Dr. Vogel-Scibilia's Opinion And Testimony

Dr. Vogel-Scibilia is a psychiatrist licensed to practice in the Commonwealth of Pennsylvania. See Curriculum Vitae of Dr. Vogel-Scibilia, Ex. "B." She currently works as the medical director of a local mental health clinic. See Expert Report of Dr. Vogel-Scibilia ("Report") at 2, Ex. "A." She maintains certificates from various psychiatric associations and has written articles concerning psychiatric disorders. See Curriculum Vitae of Dr. Vogel-Scibilia, Ex. "B."

Dr. Vogel-Scibilia has no training, education, or experience in criminal justice or law enforcement. Vogel-Scibilia Dep. at 169-171, Ex. "C." She admits that she is not in any way familiar with police regulations governing the use of force, self defense, or defense of others. See id. at 271-273, Ex. "C."

On November 8, 2002, Plaintiffs produced the Report that had been prepared by Dr. Vogel-Scibilia in connection with this case. The Report contains the following opinions:

There are cardinal rules about how to engage someone with acute manic symptoms. These rules were not followed . . . by the West Shore Police Department. The lack of thorough understanding of the patient's condition, severe communication problems, extremely lax safety procedures and lack of understanding how to manage persons with psychiatric illness by . . . West Shore Police were causal in the tragic outcome the patient experienced.

* * * *

The police officers behavior further escalated the situation and led to his inability to be safely contained in the community. Standards for care of persons with mental illness exist and were not followed throughout this case. The patient's death was avoidable and the escalation to aggression by the patient who was in the throes of confusion and disorganization is entirely predictable.

* * * *

Mr. Schorr's bipolar illness is a medical disability covered under the American for Disabilities Act. The care he received was grossly negligent and avoidable.

See Report at 1-2, Ex. "A."

IV. ARGUMENT

A. Dr. Vogel-Scibilia's Opinions and Testimony are Inadmissible Under Rule 702 of the Federal Rules of Evidence

The determination of whether expert testimony is admissible is a question of law. See Fed. R. Evid. 104(a); Daubert v. Merrell Dow Pharma., Inc., 509 U.S. 579, 592 (1993). The trial court, acting as a gatekeeper, "must ensure that any and all [expert] testimony or evidence admitted not only be relevant, but reliable." Daubert, 509 U.S. at 589. Accordingly, the trial court is charged with determining that the proposed expert testimony "be supported by appropriate validation – *i.e.* 'good grounds,' based on what is known." Id. at 590.

In order to be admissible, the trial court must determine whether the proposed expert testimony meets two criteria under Federal Rule of Evidence 702:¹ (1) whether the proposed expert is qualified to testify on the subject; and (2) whether the testimony will assist the trier of fact in understanding or determining a fact in issue. See Daubert, 509 U.S. at 592. The answer to both questions in this instance is no.

1. Dr. Vogel-Scibilia Is Not Qualified to Testify as to Whether the Police Officers' Actions Were Appropriate

In determining whether a witness is qualified to provide expert testimony under Federal Rule of Evidence 702, the court must first determine whether he or she possesses “specialized knowledge regarding the area of testimony.” Elcock v. Kmart Corp., 233 F.3d 734, 741 (3d Cir. 2000) (quoting Waldorf v. Shuta, 142 F.3d 601, 625 (3d Cir. 1998)). Although this requirement is interpreted liberally, “at a minimum, a proffered expert witness . . . must possess skill or knowledge greater than the average layman.” Id. (citations omitted).

Moreover, a witness who qualifies as an expert in one field will not necessarily qualify as an expert in all fields. See Goodwin v. MTD Products, Inc., 232 F.3d 600, 609 (7th Cir. 2000) (affirming district court’s determination that expert in engineering was qualified to testify as to the design of defendant’s product but was not qualified to render an opinion as to the injury sustained by plaintiff from use of the product). “In other words, the specialized knowledge must

¹ Federal Rule of Evidence 702 states:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

be relevant to the area of inquiry.” Fedor v. Freightliner, Inc., 193 F. Supp.2d 820, 829 (E.D. Pa. 2002).

In Fedor, the court analyzed the qualifications of plaintiff’s proposed expert, Dr. Stephen Wilcox, to testify as to the allegedly defective design of a truck step system. Id. at 822. One of the bases for his opinion that the step system was defectively designed concerned the surface friction and radius of the step. He testified that his conclusion was based, in part, on “basic physics.” Id. at 823-824. Although Dr. Wilcox had a Ph.D. in experimental psychology, with coursework in biomechanics, and had investigated hundreds of accidents, he had no expertise in engineering. Id. at 826-27. Because his conclusions were based upon principles of engineering, defendants argued that his testimony was irrelevant and should be excluded. Id. at 827. The court agreed with the defendants and concluded that Dr. Wilcox was not qualified to offer expert testimony on the design or radius of the step. Id. at 828. The court found that Dr. Wilcox, while possessing “specialized knowledge” in the field of ergonomic and human factors, had virtually no experience in engineering or physics. Id. Consequently, Dr. Wilcox was prohibited from testifying on these subjects. See also Berry v. City of Detroit, 25 F.3d 1342, 1349 (6th Cir. 1994) (holding that a sociologist, who had some experience working as a sheriff, was not qualified to testify as an expert on police policies and procedures).

Like Dr. Wilcox, Dr. Vogel-Scibilia is not qualified to offer opinions or testimony on the subjects for which she has been offered – specifically, the appropriateness of the police officers’ actions. See Report at 1-2, Ex. “A.” Dr. Vogel-Scibilia opined that the police officers in this case acted inappropriately because their actions violated the “cardinal rules” about how to engage someone with acute manic symptoms. See id., Ex. “B.” During her deposition, Dr. Vogel-Scibilia explained that there are about six cardinal rules and summarized them as follows:

- Space - “[W]hen you’re first approaching and engaging someone you keep your distance” See Vogel-Scibilia Dep. at 199, Ex. “C.”
- Control - “You firmly but politely state your issue” See id. at 201, Ex. “C.”
- Tenor of Conversation - “You don’t yell at someone.” See id. at 203, Ex. “C.”
- Empathy - “[C]ommunicate to them the idea that you care about them” See id. at 206, Ex. “C.”
- Safety - “[F]irst do no harm” See id. at 207, Ex. “C.”
- Practicality - “You have to be able to be flexible and kind of roll with the situation.” See id. at 209, Ex. “C.”

Dr. Vogel-Scibilia does not maintain any “specialized knowledge” of the law or law enforcement to qualify her as an expert on the appropriateness of the officers’ actions. See Fedor, 193 F. Supp.2d at 829. She is not, nor has she ever been, a police officer. See Vogel-Scibilia Dep. at 170, 179, Ex. “C.” She has no education or experience in law enforcement. See id. at 170, Ex. “C.” When asked if she was familiar with police regulations governing the use of force, self defense, or defense of others, she responded in the negative See id. at 272-273, Ex. “C.”

Dr. Vogel-Scibilia’s opinions and testimony are based on her experiences as a psychiatrist. The mere fact that she believes that the officers violated several of her so-called “cardinal rules” should have no bearing on whether the officers’ actions were improper. Perhaps fearing that she would be found unqualified to render an opinion concerning the officers’ actions, Dr. Vogel-Scibilia explained that her opinions were also based on the American with Disabilities Act (“ADA”) and insisted that she was “offering an expert opinion with respect to what the ADA required in this case.” See id. at 178, Ex. “C.” Yet, Dr. Vogel-Scibilia flatly admits that she is not a lawyer. See id. at 179-180, Ex. “C.”

Dr. Vogel-Scibilia's "cardinal rules" are wholly inappropriate to the law enforcement setting. It is ridiculous to expect that a police officer tasked with the duty to protect others and facing a deadly assailant would have to adhere to rules which would require him to give an armed assailant space and to speak politely to him. Dr. Vogel-Scibilia cannot provide expert opinions or testimony of the appropriateness of the police officers' actions, such as the use of deadly force or when self-defense is appropriate, when she does not have any knowledge whatsoever about such issues.

2. Dr. Vogel-Scibilia's Opinions and Testimony Will Not Assist the Trier of Fact in Determining Whether Defendants Should Be Held Liable

Dr. Vogel-Scibilia's testimony will not assist the trier of fact. She admitted during her deposition that her opinions are based, in part, on common sense. See id. at 225, Ex. "C." Expert testimony cannot be based on common sense. See U.S. v. Gibbs, 190 F.3d 188, 212-13 (3d. Cir. 1999) (finding that the trial court abused its discretion in failing to exclude the prosecution's expert testimony explaining phrases that the jury could understand for itself). Likewise, expert testimony cannot be based on the inevitable conjecture that will occur if Dr. Vogel-Scibilia is allowed to testify as to subjects over which she maintains no expertise. Such conjecture will only serve to confuse the trier of fact with baseless conclusions and theories. Consequently, Dr. Vogel-Scibilia's opinions and testimony should be excluded as against the WSPD and Chief Dougherty.

B. Dr. Vogel-Scibilia's Opinions and Testimony Should Also Be Excluded Under Rule 403 Because any Probative Value Is Substantially Outweighed by the Danger of Confusion

Pursuant to Rule 403 of the Federal Rules of Evidence, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or ... by considerations of undue delay, waste of time or needless presentation of

cumulative evidence.” Dr. Vogel-Scibilia’s proposed opinions and testimony on the appropriateness of the officers’ actions – based on the beliefs of someone trained in psychiatry – are unreliable and thus has no probative value whatsoever. Even if Dr. Vogel-Scibilia’s opinions and testimony were probative, however, the danger of unfair prejudice and confusion of the issues would substantially outweigh it. Specifically, her theories may mislead the jury. While Dr. Vogel-Scibilia’s area of expertise has nothing to do with law enforcement, a jury may overlook this fact because they are so impressed by her credentials.


Moreover, Plaintiffs already have identified a witness, D.P. Van Blaricom, to offer expert testimony on law enforcement. To allow a second witness to similarly opine, particularly one with inadequate knowledge on the subject would invite confusion and cause “undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid. 403.

V. CONCLUSION

For the foregoing reasons, Defendants WSPD and Chief Dougherty respectfully request that this Court grant their motion and preclude Dr. Vogel-Scibilia from offering any opinions or testimony against them.

Respectfully submitted,

Dated: May 6, 2003



David J. MacMain (Pa. Atty. I.D. No. 59320)
Gregory J. Hauck (Pa. Atty. I.D. No. 82958)
MONTGOMERY, McCRACKEN,
WALKER & RHOADS, LLP
123 South Broad Street
Philadelphia, PA 19109-1099
(215) 772-1500

Attorneys for Defendants West Shore
Regional Police Commission and Chief
Howard Dougherty

CERTIFICATE OF NONCONCURRENCE

Defendants West Shore Regional Police Commission and Chief Howard Dougherty
certify that they have sought concurrence in the foregoing motion from Plaintiffs and that it has
been denied.

Dated: May 6, 2003



Gregory J. Harck

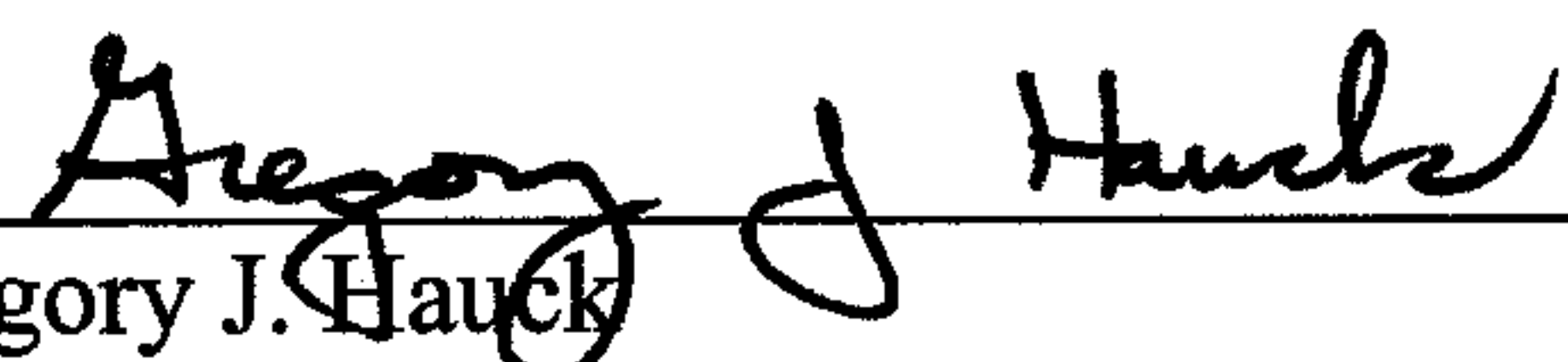
CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing proposed order, motion in limine, and supporting brief to be served, via first-class mail, postage prepaid, upon each of the following persons:

Gerald J. Williams, Esquire
Williams, Cuker & Berezofsky
One Penn Center
1617 JFK Boulevard, Suite 800
Philadelphia, PA 19103-1895
Attorney for Plaintiffs

John F. Yaninek
Mette, Evans & Woodside
3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950
Attorney for Holy Spirit Hospital and
Cumberland County

Dated: May 6, 2003



Gregory J. Hauck

A

Beaver County Psychiatric Services

219 THIRD STREET

BEAVER, PA 15009

OFFICE: (724) 775-9150 EMERGENCY (724) 775-9152

FAX (724) 775-9153

Williams, Cuker, Berezofsky
One Penn Center at Suburban Station
1617 J.F.K. Boulevard
Suite 800
Philadelphia, Pennsylvania 19103-1819

November 8, 2002

Re: Schorr, et al v. Borough of Lemoyne et al.

Preliminary Report

My name is Suzanne Vogel-Scibilia M.D. I am the medical director of a local mental health clinic in an area of Pennsylvania similar to Cumberland County. I have been asked to comment on the following issues in relation to the above mentioned case:

Bipolar disorder is an extremely common (1-2% of the population) disorder which causes erratic, unpredictable behavior, depression, suicide, elevated mood periods and as in the case of Mr. Schorr, psychotic episodes. Mr. Schorr had classical features of this illness which has a chronic course requiring lifetime treatment. He also had another equally important diagnosis, mixed substance dependence, for which he had been receiving outpatient treatment until several months before his death. He was discharged from outpatient drug and alcohol services at Holy Spirit in the summer, 2002 before his death. He was discharged without adequate follow-up and assigned only to medication checks at the Holy Spirit outpatient facility which did not adequately monitor his signs of relapse, nor provide substance abuse treatment. When patients with a dual diagnosis relapse from their psychiatric illness in this circumstance they most often also relapse-using chemicals such as was found in Mr. Schorr's blood. This is a very predictable finding - consistent with his diagnosis. Patients with Bipolar disorder tend to react impulsively, seek hedonistic sensations from chemicals or try to medicate their symptoms. This was previously documented in Mr. Schorr's particular case as well as found in the terminal incident that is the basis of this litigation.

Patients with bipolar illness respond to certain interventions well known to the treatment community. There are cardinal rules about how to engage someone with acute manic

Page 2

symptoms . These rules were not followed – both by Holy Spirit and by the West Shore Police Department. The lack of thorough understanding of the patient's condition, severe communication problems, extremely lax safety procedures and lack of understanding how to manage persons with psychiatric illness by both Holy Spirit and West Shore Police were causal in the tragic outcome the patient experienced. This patient's intent for the aggressive behavior appeared to be self protection. He had opportunity to shoot firearms and instead struck the officers with them suggesting he had no clear lethal intent.

Holy Spirit's treatment of this patient beginning with his confinement in a small locked room that ultimately was not secure escalated his paranoia which resulted in him eloping from the facility. The telephone call from Holy Spirit informing the patient that the police were coming to arrest him further instigated the dangerous situation. The police officers behavior further escalated the situation and led to his inability to be safely contained in the community. Standards for care of persons with mental illness exist and were not followed throughout this case. The patient's death was avoidable and the escalation to aggression by the patient who was in the throes of confusion and disorganization is entirely predictable.

Mr. Schorr's bipolar illness is a medical disability covered under the American for Disabilities Act. The care he received was grossly negligent and avoidable. I am available to testify to this if needed.



Suzanne Vogel-Scibilia MD

B

CURRICULUM VITAE

BIOGRAPHICAL

NAME: Suzanne Vogel-Scibilia, MD	BIRTH DATE: October 23, 1959
HOME ADDRESS: 758 River Road Beaver, PA 15009	BIRTH PLACE: Pittsburgh, PA
BUSINESS ADDRESS: Beaver County Psychiatric Services 219 Third Street Beaver, PA 15009	CITIZENSHIP: USA
	BUSINESS PHONE: 724-775-9150
	EMERGENCY: 724-775-9152
	FAX: 724-775-9153

EDUCATION AND TRAINING

UNDERGRADUATE

1977 - 1981	Johns Hopkins University Baltimore, Maryland	B.A. Natural Sciences Area Major
-------------	---	-------------------------------------

GRADUATE

1981 - 1985	University of Pittsburgh School of Medicine Pittsburgh, PA	Dr. Rubin Dean of Medicine
-------------	--	-------------------------------

POSTGRADUATE

1985 - 1986	Internship in Medicine and Pediatrics Montefiore Hospital of Pittsburgh Pittsburgh, PA	Dr. Philip Troen Physician-in-Chief
1987 - 1989	Residency in Adult Psychiatry University of Pittsburgh School Of Medicine Western Psychiatric Institute and Clinic Pittsburgh, PA	Michael Rancurello, Director of Residency Education in General and Adult Psychiatry
01/90 - 06/90	Chief Resident Mood Disorders Module Western Psychiatric Institute and Clinic Pittsburgh, PA	Jack Cornelius, MD Medical Director

CERTIFICATION AND LICENSURE

MEDICAL AND OTHER PROFESSIONAL LICENSURE

Commonwealth of Pennsylvania
State Board of Medicine, 1989

CERTIFICATION

American Board of Psychiatry
And Neurology, 1991

CERTIFICATION

American Board of Adolescent
Psychiatry, 1993

CERTIFICATION

American Board of Psychiatry and
Neurology with qualification in
Geriatric Psychiatry, 1994

CERTIFICATION

American Board of Psychiatry and
Neurology with qualification in
Addiction Psychiatry, 1994

CERTIFICATION

American Society of Addiction
Medicine, 1994

MEMBERSHIPS IN PROFESSIONAL AND SCIENTIFIC SOCIETIES

1985 – 1990	Association for the Study of Dreams
1989	American Association for Geriatric Psychiatry
1990 – Present	American Psychiatry Association
1991	American Academy of Psychiatrists in Alcoholism and Addiction
1993 – Present	American Society of Addictive Medicine
1994	American Board of Forensic Examiners

HONORS

1980	Phi Beta Kappa Honor Society Dean's List – eight semesters
1984	Alpha Omega Alpha Honor Medical Society
1989	Laughlin Award for Merit – National Psychiatric Fund Fellow
1990	Chief Resident – Western Psychiatric Institute
1992	Exemplary Psychiatrist Award – National Alliance for The Mentally Ill
1996	Exemplary Psychiatrist Award – National Alliance for The Mentally Ill
1996	Super-Supporter Award – Beaver County Mental Health Association
1997	National Consumer Advocacy Award – Institute of Behavioral Health
1997	Psychiatrist of the Year – Pennsylvania Alliance for The Mentally Ill
1998	Eli Lilly Program Award for Clinical Medicine at Psychiatric Services Convention, Los Angeles, CA
2001	Fellow, American Psychiatric Association
2001	Consumer Council Award, National Alliance for The Mentally Ill
2001	Exemplary Psychiatrist Award – National Alliance for the Mentally Ill

PUBLICATIONS

REFERRED ARTICLES

1. Vogel-Scibilia SE: Mulsant BM, Keshavan MK: HIV Psychosis, a critique Acta Psych Scan, 78:652-656, November 1988
2. Vogel-Scibilia SE: Gershon, S: An update on cognitive enhancers for the elderly. New Trends in Clinical Neuropharmacology, 3 (4):207-217, 1989.
3. Vogel-Scibilia SE: Pharmacotherapy of Dementia. Clinical Advances in the Treatment of Psychiatric Disorders, June 1990, Page 12
4. Vogel-Scibilia SE: Decade of the Brain – "Psychiatric Ethics" April, 1999
5. Vogel-Scibilia SE: The Journal, 1999 (CAMI) – "A Permanent Solution, A Temporary Problem" P 39-40

6. Vogel-Scibilia SE: Journal of Biological Psychiatry - "The Controversy Over Challenge and Discontinuation Studies" - October, 1999 15;46 (8) 1021-4
7. Vogel-Scibilia SE: The Journal, 2000 (CAMI) "I am a Prosumer"
8. Frese FI 3rd. Stanley J, Kress K, Vogel-Scibilia S.: "Integrating Evidence Based Practices and the Recovery Model Psych Services 2001 November, 52 (11) 1462 - 8
9. Muesser KT, Corrigan PW, Hilton DW, Tanzman B, Schaub A, Gingerich S, Essock SM, Tarrier N, Morey B, Vogel-Scibilia S, Herz MI: "Illness Management and Recovery: A review of the research" Psych Services 2002 October, 53 (10) 1272 - 84
10. Vogel-Scibilia SE: "Current Issues in Psychiatric Research" Psychiatric Times December 2002

POSTERS

1. Poster Session: May, 1998, Society of Biological Psychiatry, "Does HIV Psychosis Exist?", Mulsant, BM Vogel-Scibilia, SE, Keshavan, MK.
2. Poster Session: October, 1990, Institute of Hospital & Community Psychiatry, "Issues Concerning the Residence Training of Bipolar Psychiatrists", Vogel-Scibilia, SE and Trzaskovich, SK.
3. Poster Session: December 1, 1995, American Association of Physicians for Alcohol and Addictions - "Anticholinergic Abuse", Vogel-Scibilia, SE.
4. Poster Session: July 17, 1998 - National Alliance for the Mentally "Managed Care Issues".
5. Poster Session: July 17, 1998 - National Alliance for the Mentally Ill "Consumer Provider Issues".
6. Poster Session: June 18, 1999 - International Bipolar conference "Hyperammonemia with Depakote Therapy".
7. Poster Session: June 15, 2001, International Bipolar Conference "GBL Intoxication Masquerading as Bipolar Disorder"

PROFESSIONAL ACTIVITIES

TEACHING

06/90 -07/91	Organizer, Affective Disorders Journal Club
10/89 -07/91	Lecturer, WPIC Office of Education and Regional Programming, "Counseling the Chronic and Terminally Ill."
05/91 - 07/91	Lecturer, WPIC Office of Education and Regional Programming, "Crisis Management".
05/89 - 07/91	Instructor, 2 nd year medical students; small group discussions.
05/89 - 07/91	Instructor, 3 rd year medical students; serving on committee to revise Medical Student Syllabus.
01/90 - 07/91	Daily supervision of psychiatric residents and medical students during their rotations on the 10 th floor inpatient service; Western Psychiatric Institute
07/91 - Present	Inservices to resident psychiatric staff, The Medical Center, Beaver, as well as Family Practice Residents.
1993 - Present	Psychotherapy Supervisor, Psychiatric Residents at Western Psychiatric Institute. Lecturer in Community Psychiatric Course
07/95 - 01/96	Supervisor, Duquesne University Masters Program - Internship Division.

SERVICE

1984 - 1991	Telephone Crisis Counselor, Contact Pittsburgh, General Division.
1988 - 1991	Telephone Crisis Counselor, Elderly Reassurance Division.
1987 - 1988	Resident Representative, Center for Psychotherapy Steering Committee.
1988 - 1989	WPIC House Staff President
1991 - Present	Monthly presentations in the community on psychiatric topics
1995 - Present	"Ask the Doctor" series at the Phoenix Drop-in Center, Rochester, PA
1995 - Present	AMI, Beaver County: Lecturer for Coping Skills Classes
1997 - Present	Co-leader Bipolar Disorder Support Group, Rochester Methodist Church, Rochester, PA.
1998 - Present	President - <u>Brighton First</u> - a non-profit organization to address mental health needs in Beaver County.
1998 - Present	AMI-CARE and AMI-CAN, Beaver County, Group Leader
1998 - Present	Columnist for Alliance of PA NAMI Columnist for Alliance Voice of SW AMI PA
1998 - 1999	Columnist for Oregon Voice, Portland, Oregon
1998 - Present	Guest Lecturer in Library Science - St. Peter and Paul's Church.
1998 - Present	Speaker, Family to Family, NAMI
June 1998	Reviewer for the National Substance Abuse and Mental Health Services Administration (SAMSHA) for consumer-operated grant proposals for the 1999 fiscal year
July 1998	Reviewer for National Institute of Mental Health - Research Issues in Schizophrenia
Aug 1998 - Sept 2001	Board of Directors - Alliance for the Mentally Ill - SW Pennsylvania Chairman - Education Committee Member of the SW AMI/OERP Committee
Sept 1998 - Present	Board of Directors - National Alliance for The Mentally Ill, Pennsylvania. Psychiatric Advanced Directives' Chairman. Education and Training Committee, Chair. Executive Director - Search Committee.
December 1, 1998	Testimony for The National Institute of Mental Health - Ethics of Research Discontinuation Studies in Maintenance Treatment of Depression.
February 1998 - Present	Forensic Committee - Mental Health Association of Beaver County.
Jan 1999 - Dec 1999	Participation in Four NAMI Educational Videos
March 1999 - Present	NIMH - Reviewer for psychiatric research grants, Bethesda, Maryland
April 1999 - Present	Panel member - Data and Safety Monitoring Board - NIMH, Bethesda, Maryland
April 1999 - July 2002	Councilor at large, Pittsburgh Psychiatric Society
May 1999 - Present	APA/NAMI Collaborative Workshop Series at National APA Conference
July 1999 - July 2001	Chair, National Consumer Council for NAMI (CCNAMI)
Oct 1999 - July 2001	Chair of CCNAMI Operating Procedures Committee Chair of CCNAMI Advance Directives Committee

Jan 2000 – July 2000	Chairman, NAMI Pennsylvania Annual Conference 2000
Sept 2000 – Nov 2000	Reviewer for National Institute of Mental Health – Early Onset Psychosis in Young Adults, Bethesda, Maryland
Jan 2001 – July 2001	Chairman, NAMI Pennsylvania Annual Conference of 2001
Jan 2001 – Present	Chairman, Pennsylvania Psychiatric Society; Essay Contest – “When Not To Tell A Secret”
January 2001 – Present	Forensic Committee, Pittsburgh Psychiatric Society
January 2001 – Present	Peer to Peer Recovery Pilot Program – for NAMI; Consultant – Advance Directive Program
April 2001	Participation in Pennsylvania’s Department of Public Welfare’s Antistigma Video
July 2001 – Present	Board of Directors, National Alliance of the Mentally Ill – National, Arlington, Virginia Chair - Child and Adolescent Policy Committee
October, 2001	Chairman – Mental Illness Awareness Week Program, NAMI, Beaver County
Dec 2001 – Present	Consultant, University of Illinois – Self Determination Workgroup
January 2002	Consultant, University of Maryland, Grant to develop psychiatric capacity evaluation scale
July 2002 – Present	Treasurer, Pittsburgh Psychiatric Society

1
2
3
4
5 IN THE UNITED STATES DISTRICT COURT FOR THE
6 MIDDLE DISTRICT OF PENNSYLVANIA

7
8 KEITH I. SCHORR and
9 SUSAN SCHORR,

10 Plaintiffs,

11 vs.

12 WEST SHORE REGIONAL
13 POLICE COMMISSION,
14 HOWARD DOUGHERTY,
15 CUMBERLAND COUNTY,
16 and HOLY SPIRIT
17 HOSPITAL,

18 Defendants.

9) CIVIL DIVISION
10)
11) No. 1:CV-01-0930
12)
13) Telephonic Deposition
14) SUZANNE VOGEL-SCIBILIA,
15) M.D., (VOLUME II)
16)
17) Called on Behalf of
18) the Defendant
19)
20) Counsel of Record for
21) this Party:
22)
23) Greg Hauck, Esq.
24) Montgomery, McCracken,
25) Walker & Rhoades
26) 123 South Broad Street
27) Philadelphia, PA 19109
28)
29)
30)
31)
32)
33)
34)
35)
36)
37)
38)
39)
40)
41)
42)
43)
44)
45)
46)
47)
48)
49)
50)
51)
52)
53)
54)
55)
56)
57)
58)
59)
60)
61)
62)
63)
64)
65)
66)
67)
68)
69)
70)
71)
72)
73)
74)
75)
76)
77)
78)
79)
80)
81)
82)
83)
84)
85)
86)
87)
88)
89)
90)
91)
92)
93)
94)
95)
96)
97)
98)
99)
100)
101)
102)
103)
104)
105)
106)
107)
108)
109)
110)
111)
112)
113)
114)
115)
116)
117)
118)
119)
120)
121)
122)
123)
124)
125)
126)
127)
128)
129)
130)
131)
132)
133)
134)
135)
136)
137)
138)
139)
140)
141)
142)
143)
144)
145)
146)
147)
148)
149)
150)
151)
152)
153)
154)
155)
156)
157)
158)
159)
160)
161)
162)
163)
164)
165)
166)
167)
168)
169)
170)
171)
172)
173)
174)
175)
176)
177)
178)
179)
180)
181)
182)
183)
184)
185)
186)
187)
188)
189)
190)
191)
192)
193)
194)
195)
196)
197)
198)
199)
200)
201)
202)
203)
204)
205)
206)
207)
208)
209)
210)
211)
212)
213)
214)
215)
216)
217)
218)
219)
220)
221)
222)
223)
224)
225)
226)
227)
228)
229)
230)
231)
232)
233)
234)
235)
236)
237)
238)
239)
240)
241)
242)
243)
244)
245)
246)
247)
248)
249)
250)
251)
252)
253)
254)
255)
256)
257)
258)
259)
260)
261)
262)
263)
264)
265)
266)
267)
268)
269)
270)
271)
272)
273)
274)
275)
276)
277)
278)
279)
280)
281)
282)
283)
284)
285)
286)
287)
288)
289)
290)
291)
292)
293)
294)
295)
296)
297)
298)
299)
300)
301)
302)
303)
304)
305)
306)
307)
308)
309)
310)
311)
312)
313)
314)
315)
316)
317)
318)
319)
320)
321)
322)
323)
324)
325)
326)
327)
328)
329)
330)
331)
332)
333)
334)
335)
336)
337)
338)
339)
340)
341)
342)
343)
344)
345)
346)
347)
348)
349)
350)
351)
352)
353)
354)
355)
356)
357)
358)
359)
360)
361)
362)
363)
364)
365)
366)
367)
368)
369)
370)
371)
372)
373)
374)
375)
376)
377)
378)
379)
380)
381)
382)
383)
384)
385)
386)
387)
388)
389)
390)
391)
392)
393)
394)
395)
396)
397)
398)
399)
400)
401)
402)
403)
404)
405)
406)
407)
408)
409)
410)
411)
412)
413)
414)
415)
416)
417)
418)
419)
420)
421)
422)
423)
424)
425)
426)
427)
428)
429)
430)
431)
432)
433)
434)
435)
436)
437)
438)
439)
440)
441)
442)
443)
444)
445)
446)
447)
448)
449)
450)
451)
452)
453)
454)
455)
456)
457)
458)
459)
460)
461)
462)
463)
464)
465)
466)
467)
468)
469)
470)
471)
472)
473)
474)
475)
476)
477)
478)
479)
480)
481)
482)
483)
484)
485)
486)
487)
488)
489)
490)
491)
492)
493)
494)
495)
496)
497)
498)
499)
500)
501)
502)
503)
504)
505)
506)
507)
508)
509)
510)
511)
512)
513)
514)
515)
516)
517)
518)
519)
520)
521)
522)
523)
524)
525)
526)
527)
528)
529)
530)
531)
532)
533)
534)
535)
536)
537)
538)
539)
540)
541)
542)
543)
544)
545)
546)
547)
548)
549)
550)
551)
552)
553)
554)
555)
556)
557)
558)
559)
560)
561)
562)
563)
564)
565)
566)
567)
568)
569)
570)
571)
572)
573)
574)
575)
576)
577)
578)
579)
580)
581)
582)
583)
584)
585)
586)
587)
588)
589)
590)
591)
592)
593)
594)
595)
596)
597)
598)
599)
600)
601)
602)
603)
604)
605)
606)
607)
608)
609)
610)
611)
612)
613)
614)
615)
616)
617)
618)
619)
620)
621)
622)
623)
624)
625)
626)
627)
628)
629)
630)
631)
632)
633)
634)
635)
636)
637)
638)
639)
640)
641)
642)
643)
644)
645)
646)
647)
648)
649)
650)
651)
652)
653)
654)
655)
656)
657)
658)
659)
660)
661)
662)
663)
664)
665)
666)
667)
668)
669)
670)
671)
672)
673)
674)
675)
676)
677)
678)
679)
680)
681)
682)
683)
684)
685)
686)
687)
688)
689)
690)
691)
692)
693)
694)
695)
696)
697)
698)
699)
700)
701)
702)
703)
704)
705)
706)
707)
708)
709)
710)
711)
712)
713)
714)
715)
716)
717)
718)
719)
720)
721)
722)
723)
724)
725)
726)
727)
728)
729)
730)
731)
732)
733)
734)
735)
736)
737)
738)
739)
740)
741)
742)
743)
744)
745)
746)
747)
748)
749)
750)
751)
752)
753)
754)
755)
756)
757)
758)
759)
760)
761)
762)
763)
764)
765)
766)
767)
768)
769)
770)
771)
772)
773)
774)
775)
776)
777)
778)
779)
780)
781)
782)
783)
784)
785)
786)
787)
788)
789)
790)
791)
792)
793)
794)
795)
796)
797)
798)
799)
800)
801)
802)
803)
804)
805)
806)
807)
808)
809)
810)
811)
812)
813)
814)
815)
816)
817)
818)
819)
820)
821)
822)
823)
824)
825)
826)
827)
828)
829)
830)
831)
832)
833)
834)
835)
836)
837)
838)
839)
840)
841)
842)
843)
844)
845)
846)
847)
848)
849)
850)
851)
852)
853)
854)
855)
856)
857)
858)
859)
860)
861)
862)
863)
864)
865)
866)
867)
868)
869)
870)
871)
872)
873)
874)
875)
876)
877)
878)
879)
880)
881)
882)
883)
884)
885)
886)
887)
888)
889)
890)
891)
892)
893)
894)
895)
896)
897)
898)
899)
900)
901)
902)
903)
904)
905)
906)
907)
908)
909)
910)
911)
912)
913)
914)
915)
916)
917)
918)
919)
920)
921)
922)
923)
924)
925)
926)
927)
928)
929)
930)
931)
932)
933)
934)
935)
936)
937)
938)
939)
940)
941)
942)
943)
944)
945)
946)
947)
948)
949)
950)
951)
952)
953)
954)
955)
956)
957)
958)
959)
960)
961)
962)
963)
964)
965)
966)
967)
968)
969)
970)
971)
972)
973)
974)
975)
976)
977)
978)
979)
980)
981)
982)
983)
984)
985)
986)
987)
988)
989)
990)
991)
992)
993)
994)
995)
996)
997)
998)
999)
1000)
1001)
1002)
1003)
1004)
1005)
1006)
1007)
1008)
1009)
1010)
1011)
1012)
1013)
1014)
1015)
1016)
1017)
1018)
1019)
1020)
1021)
1022)
1023)
1024)
1025)
1026)
1027)
1028)
1029)
1030)
1031)
1032)
1033)
1034)
1035)
1036)
1037)
1038)
1039)
1040)
1041)
1042)
1043)
1044)
1045)
1046)
1047)
1048)
1049)
1050)
1051)
1052)
1053)
1054)
1055)
1056)
1057)
1058)
1059)
1060)
1061)
1062)
1063)
1064)
1065)
1066)
1067)
1068)
1069)
1070)
1071)
1072)
1073)
1074)
1075)
1076)
1077)
1078)
1079)
1080)
1081)
1082)
1083)
1084)
1085)
1086)
1087)
1088)
1089)
1090)
1091)
1092)
1093)
1094)
1095)
1096)
1097)
1098)
1099)
1100)
1101)
1102)
1103)
1104)
1105)
1106)
1107)
1108)
1109)
1110)
1111)
1112)
1113)
1114)
1115)
1116)
1117)
1118)
1119)
1120)
1121)
1122)
1123)
1124)
1125)
1126)
1127)
1128)
1129)
1130)
1131)
1132)
1133)
1134)
1135)
1136)
1137)
1138)
1139)
1140)
1141)
1142)
1143)
1144)
1145)
1146)
1147)
1148)
1149)
1150)
1151)
1152)
1153)
1154)
1155)
1156)
1157)
1158)
1159)
1160)
1161)
1162)
1163)
1164)
1165)
1166)
1167)
1168)
1169)
1170)
1171)
1172)
1173)
1174)
1175)
1176)
1177)
1178)
1179)
1180)
1181)
1182)
1183)
1184)
1185)
1186)
1187)
1188)
1189)
1190)
1191)
1192)
1193)
1194)
1195)
1196)
1197)
1198)
1199)
1200)
1201)
1202)
1203)
1204)
1205)
1206)
1207)
1208)
1209)
1210)
1211)
1212)
1213)
1214)
1215)
1216)
1217)
1218)
1219)
1220)
1221)
1222)
1223)
1224)
1225)
1226)
1227)
1228)
1229)
1230)
1231)
1232)
1233)
1234)
1235)
1236)
1237)
1238)
1239)
1240)
1241)
1242)
1243)
1244)
1245)
1246)
1247)
1248)
1249)
1250)
1251)
1252)
1253)
1254)
1255)
1256)
1257)
1258)
1259)
1260)
1261)
1262)
1263)
1264)
1265)
1266)
1267)
1268)
1269)
1270)
1271)
1272)
1273)
1274)
1275)
1276)
1277)
1278)
1279)
1280)
1281)
1282)
1283)
1284)
1285)
1286)
1287)
1288)
1289)
1290)
1291)
1292)
1293)
1294)
1295)
1296)
1297)
1298)
1299)
1300)
1301)
1302)
1303)
1304)
1305)
1306)
1307)
1308)
1309)
1310)
1311)
1312)
1313)
1314)
1315)
1316)
1317)
1318)
1319)
1320)
1321)
1322)
1323)
1324)
1325)
1326)
1327)
1328)
1329)
1330)
1331)
1332)
1333)
1334)
1335)
1336)
1337)
1338)
1339)
1340)
1341)
1342)
1343)
1344)
1345)
1346)
1347)
1348)
1349)
1350)
1351)
1352)
1353)
1354)
1355)
1356)
1357)
1358)
1359)
1360)
1361)
1362)
1363)
1364)
1365)
1366)
1367)
1368)
1369)
1370)
1371)
1372)
1373)
1374)
1375)
1376)
1377)
1378)
1379)
1380)
1381)
1382)
1383)
1384)
1385)
1386)
1387)
1388)
1389)
1390)
1391)
1392)
1393)
1394)
1395)
1396)
1397)
1398)
1399)
1400)
1401)
1402)
1403)
1404)
1405)
1406)
1407)
1408)
1409)
1410)
1411)
1412)
1413)
1414)
1415)
1416)
1417)
1418)
1419)
1420)
1421)
1422)
1423)
1424)
1425)
1426)
1427)
1428)
1429)
1430)
1431)
1432)
1433)
1434)
1435)
1436)
1437)
1438)
1439)
1440)
1441)
1442)
1443)
1444)
1445)
1446)
1447)
1448)
1449)
1450)
1451)
1452)
1453)
1454)
1455)
1456)
1457)
1458)
1459)
1460)
1461)
1462)
1463)
1464)
1465)
1466)
1467)
1468)
1469)
1470)
1471)
1472)
1473)
1474)
1475)
1476)
1477)
1478)
1479)
1480)
1481)
1482)
1483)
1484)
1485)
1486)
1487)
1488)
1489)
1490)
1491)
1492)
1493)
1494)
1495)
1496)
1497)
1498)
1499)
1500)
1501)
1502)
1503)
1504)
1505)
1506)
1507)
1508)
1509)
1510)
1511)
1512)
1513)
1514)
1515)
1516)
1517)
1518)
1519)
1520)
1521)
1522)
1523)
1524)
1525)
1526)
1527)
1528)
1529)
1530)
1531)
1532)
1533)
1534)
1535)
1536)
1537)
1538)
1539)
1540)
1541)
1542)
1543)
1544)
1545)
1546)
1547)
1548)
1549)
1550)
1551)
1552)
1553)
1554)
1555)
1556)
1557)
1558)
1559)
1560)
1561)
1562)
1563)
1564)
1565)
1566)
1567)
1568)
1569)
1570)
1571)
1572)
1573)
1574)
1575)
1576)
1577)
1578)
1579)
1580)
1581)
1582)
1583)
1584)
1585)
1586)
1587)
1588)
1589)
1590)
1591)
1592)
1593)
1594)
1595)
1596)
1597)
1598)
1599)
1600)
1601)
1602)
1603)
1604)
1605)
1606)
1

167

1 S. Vogel-Scibilia - by Mr. Hauck
 2 MR. PENNINGTON: Yes.
 3 MR. HAUCK: John?
 4 MR. YANINEK: Yes.
 5 MR. HAUCK: Let me just ask a
 6 question. This is a question for the court
 7 reporter. I assume you cannot identify who is
 8 talking; is that correct?
 9 COURT REPORTER: I sort of can
 10 from knowing you guys from Friday night.
 11 MR. HAUCK: I'm sorry, you said
 12 you could?
 13 COURT REPORTER: Right. I'm
 14 familiar with the voices.
 15 MR. HAUCK: Okay, great.

EXAMINATION

19 BY MR. HAUCK:

20 Q. Could you put a copy of your report in
 21 front of you.
 22 A. My report? Hello?
 23 Q. Yes, I'm still here.
 24 A. Do you mean my letter?
 25 Q. Yes.

168

1 S. Vogel-Scibilia - by Mr. Hauck
 2 A. Yes.
 3 Q. This is the document that has
 4 preliminary report on it?
 5 A. Yes. Let me just try to get it. Okay,
 6 I have it here.
 7 Q. Now toward the middle of the page on
 8 the first page it says preliminary report, do
 9 you see that?
 10 A. Yes.
 11 Q. Why does it say preliminary report?
 12 A. Because I was asked to give the report
 13 on very short notice. I was initially told I
 14 had one deadline, and so I usually write a
 15 longer letter, and so I wrote one with less of
 16 the specifics in it because I had to do it
 17 fairly quickly. And we had a typist, you know,
 18 she is not a medical person, and there is a
 19 better chance of having errors or need a
 20 revision or spelling or other things so I tried
 21 to do a preliminary report just to try to get
 22 something to Mr. Pennington and -- Attorney
 23 Pennington and Attorney Williams -- as soon as
 24 possible.
 25 Q. Do you have any intention of providing

169

1 S. Vogel-Scibilia - by Mr. Hauck
 2 a supplemental report?
 3 A. The only thing I assume I'm doing is my
 4 deposition and the notes that were things for
 5 here, but, no, everything that I've shown I
 6 assume is what I'm supposed to show. I didn't
 7 know that I could do more than what I've
 8 already done and Friday night.
 9 Q. Okay. Doctor, have you ever had any
 10 training in law enforcement?
 11 A. In law enforcement?
 12 Q. Yes.
 13 A. No. I've done work in jail settings as
 14 a psychiatrist, and I have gone out and done
 15 crisis with police officers in the community on
 16 a couple occasions, so I have an understanding
 17 of the police, and I interact with them quite a
 18 bit under the context of 302s and other kinds
 19 of things. Many times I want to go to the
 20 house of someone that I'm treating, which most
 21 psychiatrists won't do, and it's a difficult
 22 situation, and there may be some problems, and
 23 I don't want them to interface only with the
 24 police, so I go out there, and I've interacted
 25 with them in those circumstances, but have I

170

1 S. Vogel-Scibilia - by Mr. Hauck
 2 been trained as a police officer, no.
 3 Q. The work that you have done in
 4 connection with police officers, would you
 5 consider that to be work in the law enforcement
 6 area?
 7 A. I consider it to be in the forensic
 8 psychiatric area.
 9 Q. Okay.
 10 A. But I wouldn't say that I have done law
 11 enforcement, no.
 12 Q. Have you had any training in law
 13 enforcement?
 14 A. No.
 15 Q. Have you ever taken any law enforcement
 16 classes?
 17 A. No.
 18 Q. Have you ever worked for a police
 19 department?
 20 A. No.
 21 Q. Have you ever taught any classes
 22 involving law enforcement?
 23 A. I have taught classes in psychiatric
 24 aspects of law enforcement and crisis
 25 intervention for people in the community that

171

1 S. Vogel-Scibilia - by Mr. Hauck
 2 interface with law enforcement. I have given
 3 talks and lectures about this around the
 4 country, but I wouldn't say that I've ever
 5 given, like a course to an academic academy of
 6 police officers. I've certainly taught police
 7 officers, and I've done that a fair amount.
 8 Q. Okay. The courses that you've given to
 9 police officers, are they courses in which some
 10 police officers happen to be there or are all
 11 the students in the class police officers?
 12 A. The students -- and it's not like a
 13 class, like a formal class like I teach like
 14 something at Community College. What I do is I
 15 teach NAMI, the National Alliance for the
 16 Mentally Ill. Many times there will be people
 17 who are involved in forensic issues globally.
 18 You'll have the case workers who do outreach
 19 with people, you know, that have legal charges,
 20 and we have like lawyers and we have police
 21 officers and then we'll have other advocates.
 22 That's more the kind of milieu that I have.
 23 Q. How often have you taught these types
 24 of classes?
 25 A. For forensic stuff, probably, maybe a

172

1 S. Vogel-Scibilia - by Mr. Hauck
 2 couple times a year that there would be a lot
 3 of content in my talks. My talks are more
 4 general because I start out talking about what
 5 is mental illness and how do you handle someone
 6 who has mental illness and then I get into
 7 maybe more specific issues around different
 8 things. I've given those kinds of talks -- I
 9 started out giving those talks probably in the
 10 early '90s but only a couple a year.
 11 Q. Let me cut you off a second. The only
 12 thing I'm interested in right now are classes
 13 that you've taught that involve law
 14 enforcement.
 15 A. Only? You mean only law enforcement?
 16 Q. No. Classes that you taught that
 17 involve any aspect of law enforcement.
 18 A. No, not in that way, no.
 19 Q. So you haven't taught any classes that
 20 involve law enforcement?
 21 A. Not that are specifically devoted only
 22 to law enforcement issues, no. I've taught
 23 courses, again, about persons who have
 24 psychiatric illness and what happens to them in
 25 the community, how to interact with them so

173

1 S. Vogel-Scibilia - by Mr. Hauck
 2 that you don't escalate them -- the same things
 3 that I've been giving my testimony about today
 4 -- how to interact with them so you don't
 5 escalate them, how do you end up taking care of
 6 them safely, maintain their constitutional
 7 rights, not having adverse consequences to the
 8 people involved with them as well as themselves
 9 because of reckless behavior on the part of
 10 other people that are like law enforcement
 11 officers or lawyers or crisis care workers or
 12 ICMs. Anything like that. Those kinds of
 13 things I give a lot of talks about. But do I
 14 specifically talk about aspects of like when
 15 someone can be arrested or how you throw
 16 handcuffs on people or things like that, no, I
 17 do not do that.
 18 Q. Have you taught classes about how law
 19 enforcement officers should treat a person with
 20 an X disability?
 21 A. Yes, that has come up in my talks, yes.
 22 Q. Okay. Now that's really what I want to
 23 focus in on. How often have you spoken on that
 24 topic?
 25 A. Again, it would not be that commonly.

174

1 S. Vogel-Scibilia - by Mr. Hauck
 2 I would say maybe once or twice a year.
 3 Q. Once or twice a year you've taught a
 4 class and that has been addressed in the class?
 5 A. Yes. It might be more than that, but
 6 I'm being conservative in my estimate because I
 7 don't want to overestimate things for you.
 8 Q. How many years have you provided
 9 teaching on that?
 10 A. I provided teaching, just starting out
 11 though, it probably wasn't that topic. If
 12 you're thinking when that topic may have come
 13 up, I would say maybe starting in maybe '91 or
 14 '92 maybe.
 15 Q. Okay. Now the nature of your
 16 instruction, is it specifically geared toward
 17 law enforcement individuals or is it more
 18 geared towards anyone who is dealing with a
 19 person with a disability?
 20 A. When I make those comments, it's geared
 21 to discuss for people who may be on the scene
 22 when law enforcement is called and that would
 23 include law enforcement of course, but it could
 24 be paramedics -- I'm trying to think what else,
 25 you know -- nurses, ICMs, intensive case

175

1 S. Vogel-Scibilia - by Mr. Hauck
 2 managers, various things like that.
 3 Q. Okay.
 4 A. You have to realize, I mean, I do
 5 psychiatric work pretty much constantly. I
 6 mean, it's not only my job, it's kind of, you
 7 know, the thing that takes up most of my spare
 8 time, too. So pretty much anything that you
 9 ask me have I given a talk on something, I
 10 probably have to some degree or another. I
 11 mean, because there's nobody out here to give
 12 these kinds of talks. It's a very small club,
 13 so I get asked to do all different kinds of
 14 stuff.
 15 Q. Okay. Do you have any training with
 16 respect to the Americans with Disabilities Act?
 17 A. I know generally what it entails, yes.
 18 I end up advising employees --
 19 Q. Doctor, one thing that I think is in
 20 all our best interest, and I want to hear what
 21 you have to tell me, but try to just respond to
 22 the question that I'm asking you. Okay?
 23 A. I have no other training other than
 24 what other physicians get.
 25 Q. And explain to me what that training

177

1 S. Vogel-Scibilia - by Mr. Hauck
 2 A. I think I have practical understanding
 3 for people in the community. Do I think that I
 4 have, you know, some type of special knowledge
 5 and could I speak extensively on the ADA, no, I
 6 don't think so. I have the amount of knowledge
 7 I need to practice psychiatry in the community
 8 and to advise other people who are ignorant of
 9 the ADA about generally what it entails.
 10 Q. And with respect to this case, are you
 11 offering expert opinions as to what the ADA
 12 requires?
 13 A. I think that I can offer an expert
 14 opinion about what the ADA requires for people
 15 in the community, yes, because that's what I
 16 end up doing every day, is telling employers
 17 what you did you shouldn't have done or I also
 18 tell employers sometimes I think their plan for
 19 addressing the ADA needs of my clients are
 20 extremely good. So I certainly render opinions
 21 about that, about peoples' ADA rights in the
 22 community fairly commonly.
 23 Q. I'm just asking with respect to this
 24 case?
 25 A. Yes, yes. I think this case -- I mean,

176

1 S. Vogel-Scibilia - by Mr. Hauck
 2 is?
 3 A. The training is covered in like
 4 continuing medical education classes. It comes
 5 up in psychiatric lectures, and I use the ADA
 6 in my work.
 7 Q. How so?
 8 A. Well, a lot of times my patients are
 9 not having their ADA rights addressed so I end
 10 up having to talk to employers and tell them,
 11 you know, you can't give them warning letters
 12 because they used their Family Medical Leave
 13 Act and, you know, take a day off because
 14 they're sick and you can't say that they have
 15 to do some type of remediation or things like
 16 that. Or I explain to them that the kind of
 17 disability my patient has is akin to the same
 18 kind of medical disabilities that they are more
 19 familiar with like, you know, blindness or
 20 being in a wheelchair or having a heart attack
 21 and having cardiac issues. Those kinds of
 22 things. It is a lot of, like, awareness kinds
 23 of issues and education.
 24 Q. Okay. Do you consider yourself an
 25 expert as to what the ADA requires?

178

1 S. Vogel-Scibilia - by Mr. Hauck
 2 this case occurred in the community, but, I
 3 mean, do I have an academic appointment or do I
 4 do research on the subject, no.
 5 Q. So in this case you are offering expert
 6 opinion what the ADA requires?
 7 A. I assume so, yes.
 8 Q. Well, I don't want you to guess.
 9 A. No -- I mean, I assume that was part of
 10 what I was expected to do because I mentioned
 11 in my letter that I thought that his ADA rights
 12 were not upheld so I assume that's part of my
 13 testimony and is going to be part of your
 14 questioning of me is what I meant. I already
 15 told you what I do about the ADA.
 16 Q. So you are offering an expert opinion
 17 with respect to what the ADA required in this
 18 case?
 19 A. Yes. The violation of the ADA is a
 20 very simple and basic violation, sir. It's not
 21 a gray zone. Okay?
 22 Q. Okay.
 23 A. So I don't think that this takes a lot
 24 of expertise other than knowing what the ADA is
 25 to say that there was a violation.

179

1 S. Vogel-Scibilia - by Mr. Hauck
 2 Q. Do you have a license to practice law?
 3 A. No, absolutely not.
 4 Q. Have you ever taken any legal classes?
 5 A. No. I have served as a lawyer for -- I
 6 have a patient in my practice who is very
 7 severely psychiatrically ill, and he is
 8 completely unable to work and was getting
 9 notices because his wife was claiming that he
 10 couldn't pay child support, but the guy
 11 couldn't work. I mean, he was bringing in, I
 12 think, \$20 a month, and his sister was
 13 supporting him.
 14 What happened was that he came in one
 15 day into my office and said this is the last
 16 time you're going to see me because they're
 17 going to lock me up for being a deadbeat dad.
 18 I said what are you talking about, and he
 19 showed me legal paperwork. I guess this had
 20 been going on for years and years and I wasn't
 21 aware of this. So he was completely unable to
 22 represent himself and also completely unable to
 23 find a lawyer in the community to represent him
 24 because he was so psychiatrically ill so I
 25 showed up in court and represented him and got

180

1 S. Vogel-Scibilia - by Mr. Hauck
 2 the whole thing dismissed. I didn't have a
 3 legal degree. I just came in and said that I
 4 was just a concerned interested party, and I
 5 actually got the case taken care of with no
 6 legal degree. Besides that case, I think I may
 7 have had to come back once more for him and
 8 interact with the other lawyer, but besides
 9 that, I have done no legal work.
 10 Q. Prior to representing that individual,
 11 did you obtain a license to practice law?
 12 A. No. I told Judge Waco when I came in
 13 here to Beaver County that I was just a
 14 concerned person, and I was concerned that he
 15 would be unable to represent himself and he
 16 would be incarcerated because he was in arrears
 17 for these payments, and essentially I put
 18 myself on the stand and then they dismissed the
 19 whole thing.
 20 Q. Have you ever given any lectures on the
 21 requirements of the ADA?
 22 A. Not on the specific requirements other
 23 than the philosophy and the spirit of the ADA,
 24 no.
 25 Q. Have you ever written anything about

181

1 S. Vogel-Scibilia - by Mr. Hauck
 2 the requirements of the ADA?
 3 A. No, I don't think I have.
 4 Q. Are you offering an opinion in this
 5 case as to whether Officers Berresford and Hart
 6 properly acted in their capacities as police
 7 officers in their dealings with Ryan Schorr?
 8 A. I'm not sure what that question means.
 9 What I'm stating is that Officers Hart and
 10 Berresford had inadequate knowledge about
 11 psychiatric consumers, psychiatric patients and
 12 acted in such a manner that they further
 13 escalated his physical aggression towards them
 14 and they were completely unnerved because of
 15 this and acted in a way that caused his death
 16 that could have been prevented.
 17 Q. Okay.
 18 A. I think that they were -- frankly, my
 19 opinion is that they were as much a victim of
 20 this whole circumstance as Ryan Schorr was, and
 21 I understand that the plaintiffs, since they
 22 did not list them in the suit, acknowledge that
 23 they were also, you know, severely injured by
 24 this lack of training and understanding that
 25 the larger police community, you know, their

182

1 S. Vogel-Scibilia - by Mr. Hauck
 2 superiors and other people who would decide
 3 training and curriculum such that they were not
 4 named in the suit.
 5 Q. Okay. Do you have your report in front
 6 of you?
 7 A. Yes, I do, sir.
 8 Q. Okay. Could you focus on the second
 9 sentence of your report. I'll read it. It
 10 says, I am the medical director of a local
 11 mental health clinic in an area of Pennsylvania
 12 similar to Cumberland County. Do you see that?
 13 A. Yes.
 14 Q. In what sense is the area of
 15 Pennsylvania that you're in similar to
 16 Cumberland County?
 17 A. Well, it's not incredibly urban. It's
 18 not like Philadelphia or Pittsburgh proper, and
 19 it's certainly not rural like Potter County and
 20 Elk County. We are close to more concentrated
 21 population centers like they're concentrated
 22 close to Harrisburg, in the Harrisburg area,
 23 and we also share the same lack of, like,
 24 access to psychiatric care.
 25 You know, throughout Pennsylvania it's

195

1 S. Vogel-Scibilia - by Mr. Hauck

2 Q. Did you see anything in the records
3 that led you to believe that Officers
4 Berresford and Hart were aware that Ryan Schorr
5 had ingested illegal drugs at the time that the
6 officers were executing the 302 warrant?

7 A. Let me think about that for a minute.
8 I don't think that they would have had any
9 direct evidence of that, but police officers
10 who work with people with mental illness and
11 have adequate training know that people with
12 bipolar disorder and mental illness oftentimes
13 are under the influence of chemicals and so you
14 have to take that into account. I think
15 because of their lack of training and
16 understanding, my opinion would be, reading the
17 records and their deposition, that they didn't
18 know what they were getting into whenever they
19 entered the house the second time at all. And
20 that is part of the issue about my comment
21 about the issues of the West Shore Police
22 Department and their training.

23 So my assumption would be based on all
24 the information that I've gathered in this case
25 was that Officers Berresford and Hart had the

196

1 S. Vogel-Scibilia - by Mr. Hauck

2 incident that day take them totally by
3 surprise.

4 Q. Did you see any evidence in the records
5 that they did know that Ryan Schorr had
6 ingested illegal substances at the time they
7 were executing the 302 warrant?

8 A. My statement is that if they had been
9 adequately trained, they should have prepared
10 for that possibility, but I believe from
11 reading the records, that they were clueless
12 about it because of the issues about their lack
13 of training and understanding.

14 Q. Okay. I'm not asking your opinion as
15 to whether they should have known that it was
16 possible that Ryan Schorr could have used
17 illegal substances. I'm asking if you saw
18 anything in the record which indicated that the
19 officers did know that Ryan Schorr used illegal
20 substances at the time they executed the 302
21 warrant.

22 A. I have no evidence that anyone told
23 them that because there were so many bad
24 communication issues in this case. If you're
25 asking me that specific question, I would say

197

1 S. Vogel-Scibilia - by Mr. Hauck

2 that I don't think they did. The one police
3 officer talked to the mother, but he didn't
4 really gather a lot of information from what I
5 saw in his rendition of that so that probably
6 he did not know that, no. But I can't say for
7 sure. I don't know what that conversation
8 entailed.

9 Q. Let me focus your attention to the
10 third paragraph of your report, the second
11 sentence, and I'll read that. It says, there
12 are cardinal rules about how to engage someone
13 with acute manic symptoms. Do you see that?

14 A. Yes.

15 Q. How many cardinal rules are there?

16 A. That is something that if you would
17 depose different experts, you would get answers
18 along the same lines, but I think that I
19 haven't seen specific directives that are
20 followed by all mental health care
21 professionals about engaging people with acute
22 psychosis. There are many common rules.

23 Q. Let me ask you, in your opinion, how
24 many rules are there?

25 A. I can go over them. I didn't count

198

1 S. Vogel-Scibilia - by Mr. Hauck

2 them up, but I could go over them.

3 Q. Okay. Then what I would like you to do
4 is just quickly identify each rule and then
5 we'll come back and you can explain each one,
6 but right now I would like to just get a list
7 of the rules. Okay?

8 A. Okay.

9 Q. Can you do that?

10 A. Sure.

11 Q. Okay. Go ahead.

12 A. The first issue is the issue of space.
13 The first is the issue of control.

14 Q. I am sorry. Is space and control the
15 same?

16 A. No.

17 Q. So the first is space and the second is
18 control?

19 A. Right.

20 Q. Go ahead.

21 A. The third is tenor of the conversation.

22 Q. Okay. Go ahead.

23 A. The third case is empathy. The fourth
24 is safety. And the fifth, okay, is
25 practicality. These are my summation of what

199

1 S. Vogel-Scibilia - by Mr. Hauck
 2 is commonly out there.
 3 Q. You gave me six. Are there any others?
 4 A. Those probably carry a fair amount of
 5 weight.
 6 Q. Are there any others?
 7 A. Not that I can think of at this moment.
 8 Q. The first one you mentioned was space;
 9 is that right?
 10 A. Yes.
 11 Q. Could you explain to me what the
 12 cardinal rule of space is?
 13 A. The issue of space is that someone who
 14 is psychotic and agitated perceives someone as
 15 being closer than they really are. So if your
 16 manic, sir, and I'm standing three feet away
 17 from you, you perceive me as being far closer.
 18 I might appear to be right up in your face,
 19 okay. So whenever you're engaging someone,
 20 when you don't realize what they're going to do
 21 at this point, you don't have a sense of being
 22 able to get close enough to touch them or to
 23 get them to do something, when you're first
 24 approaching and engaging someone, you keep your
 25 distance, okay. You don't move fast, okay.

200

1 S. Vogel-Scibilia - by Mr. Hauck
 2 You keep your hands in plain view, okay. You
 3 let them have some space and distance. You
 4 also do not appear to crowd them in, okay.
 5 For instance, if you're in a situation
 6 where someone maybe is dangerous, you can make
 7 a circle around them that has some openings
 8 between them and give them the sense that
 9 you're not coming in with them and you can give
 10 them some distance between you and them and
 11 they can't escape, but they also are not going
 12 to feel like you're going to jump them, okay.
 13 So it's like everything when you're manic is
 14 magnified. So if you're coming at them, you
 15 actually appear to be coming at them faster
 16 than you really are. If you're standing four
 17 feet away from them, you appear to be right up
 18 on top of them, okay. That's the first thing.
 19 You don't come rushing in. You don't come
 20 right up next to them.
 21 Q. Okay. Are you done explaining that
 22 one?
 23 A. That is the basic stuff. I could
 24 elaborate more. I could talk for hours, but
 25 I'll keep it to this. It's Sunday morning.

201

1 S. Vogel-Scibilia - by Mr. Hauck
 2 Q. The second rule you mentioned was
 3 control.
 4 A. Right.
 5 Q. Could you explain that to me?
 6 A. You firmly but politely state your
 7 issue, and you never go into a situation unless
 8 you have the ability to keep yourself safe and
 9 the patient safe, okay. Control really comes
 10 into getting more information, having a lot of
 11 back-up, having -- if you can't do it, if you
 12 don't have a police officer who is trained in
 13 this, having maybe a mental health care
 14 professional with you to be able to talk to
 15 this person, okay. So you don't go into a
 16 situation where you do not have adequate means
 17 to do what you have to do and keep yourself and
 18 the patient, the consumer, safe.
 19 Q. Okay.
 20 A. I'm still going.
 21 Q. I'm sorry.
 22 A. Also, you want to have ways to be able
 23 to take care of the situation in the least
 24 noxious and least damaging and least abusive
 25 and least threatening way. In this issue, they

202

1 S. Vogel-Scibilia - by Mr. Hauck
 2 came in with lethal force. They had --
 3 Q. I'm just asking you to explain the
 4 rules right now. I'm not asking you to apply
 5 them to what happened.
 6 A. Okay, okay. So, for instance, with any
 7 police officer, you want to have levels of ways
 8 of subduing someone. The obvious first way
 9 would be manually. Someone is out of control
 10 that you could manually restrain them such that
 11 nothing happens to them that is bad and nothing
 12 happens to you. Then if you have ways, like
 13 weapons in a sense, that you would start with
 14 stuff that is not permanently damaging or
 15 painful or threatening, and you would have to
 16 obviously have some type of ascending limits of
 17 weapons, but that's another issue, too.
 18 In psychiatric care units where you
 19 have, people that are probably much more
 20 agitated on the average than the general
 21 community because they keep, in a sense, all
 22 the people that are severely agitated, there
 23 isn't a single psychiatric care worker on an
 24 inpatient unit that has a gun or a knife or
 25 anything like that. So if you have appropriate

203

1 S. Vogel-Scibilia - by Mr. Hauck
2 numbers of people, okay, and you can ascertain
3 that the person does not have, you know, some
4 way to inflict significant harm, you know -- I
5 mean people sometimes get things like knives on
6 a unit but, you know, they don't have an AK47
7 -- usually sufficient numbers of people can
8 take care of any situation just with physical
9 manual restraint.

10 Q. Are you finished?

11 A. Yes.

12 Q. The third cardinal rule you mentioned
13 was tenor of the --

14 A. Conversation.

15 Q. -- conversation. Could you explain
16 that cardinal rule to me?

17 A. You don't yell at someone. You don't
18 come in and say look, buddy, this is what you
19 do. You don't say, okay, buddy, you are coming
20 with us. Do you know what I mean? You don't
21 do that. You have very soft speech. Again,
22 with somebody manic that they're going to -- on
23 some level they're going to crave louder
24 conversations, louder noise, but louder noise
25 also is escalating. So like him playing that

204

1 S. Vogel-Scibilia - by Mr. Hauck
2 music up there -- well, I'll get to that in a
3 minute -- but anyway, they'll crave louder
4 noise on some level, but louder noise escalates
5 them. You want to have soft speech. You want
6 to have slow speech. You want to be gentle
7 about your speech. You want to logically say
8 to them something along the lines of we have
9 these concerns. It's very important that you
10 do things. And that usually works very well.
11 And that very well can de-escalate a difficult
12 situation.

13 The other thing is that you don't want
14 necessarily to make it appear as if they have
15 no choices, okay, in the conversation. You
16 want to appear as if you're trying to engage
17 them in something cooperative. So oftentimes
18 what will be done is you'll give them a choice
19 between two different things. And those two
20 different things may be something that really
21 isn't that important to you but gives them the
22 appearance that you're trying to negotiate with
23 them.

24 For instance, let's say you're in an
25 emergency room and you're telling someone that

205

1 S. Vogel-Scibilia - by Mr. Hauck
2 they have been involuntarily committed, okay.
3 And, of course, they don't want to be
4 involuntarily committed. You could say
5 something like, look I know you're really upset
6 and everything about this, and I just have to
7 tell you that this is a legal commitment and
8 you have to be committed, but could I get you
9 something to eat? Would you like a glass of
10 orange juice or would you like a can of
11 decaffeinated pop? And sometimes if you offer
12 them a choice between a glass of orange juice
13 and a glass of decaffeinated pop, then they'll
14 choose that and they'll de-escalate and then
15 you have somebody go get them the orange juice
16 or the pop, okay.

17 Actually, those kinds of things, giving
18 them some control and some choice in the
19 matter, even if it's a negligible choice. If
20 you have somebody that is agitated and you
21 enter a room, you say could we sit down and
22 talk about this? Would you like to sit on the
23 bed or would you like to sit in a chair?
24 Something like that starts off the conversation
25 with giving them some type of choice. It's a

206

1 S. Vogel-Scibilia - by Mr. Hauck
2 whole different tenor than I'm the police
3 officer and I'm in control and this is what I'm
4 doing, which is against generally what law
5 enforcement officers are trained to do. That's
6 why they need special training.

7 Q. The fourth cardinal rule that you
8 mentioned was empathy?

9 A. Yes.

10 Q. Could you briefly explain to me what
11 that cardinal rule is?

12 A. I think it means that you have to
13 communicate to them the idea that you care
14 about them, that you don't want anything to
15 happen to them, you are concerned about them,
16 and you have to communicate that genuinely. I
17 mean, you want to make eye contact with them,
18 you want to look in their eyes. You don't want
19 to stare at them though. If looking at them
20 directly to be empathic seems to agitate them,
21 the two of you can then look at some other kind
22 of thing. Sometimes I'll sit with my back to
23 the same wall the patient is sitting at and
24 there is some distance between us and we'll
25 appear to both look straight ahead. This tends

207

1 S. Vogel-Scibilia - by Mr. Hauck
2 to work better with someone like, let's say,
3 with schizophrenia or something like that who
4 is extraordinarily paranoid.

5 People with bipolar disorder generally
6 like to look at you, okay. But, I mean, you
7 know, you can do that as well. There's all
8 different kinds of techniques that you can do.
9 You know, any training that someone would get
10 would probably get other practical suggestions
11 maybe than the ones that I'm giving you, but
12 I'm giving you some general kinds of stuff.
13 You want to have the issue of empathy.

14 Q. Okay. The next cardinal rule that you
15 mentioned was safety?

16 A. Yes, safety.

17 Q. Could you briefly explain what that
18 cardinal rule is?

19 A. It's really first do no harm, okay.
20 Safety is of the primary importance. You want
21 the people involved to be safe and you want the
22 patient, the consumer, to be safe. As I said,
23 sometimes you have to leave an exit to the door
24 or some space to the door so that if for some
25 reason it is safe to let them get out of the

208

1 S. Vogel-Scibilia - by Mr. Hauck
2 room, okay -- there may be situations where
3 maybe you're just talking to someone and you're
4 not trying necessarily to pick them up or maybe
5 even if there's other people outside, if you
6 give an opening to the door, they'll feel more
7 secure. They won't feel like they're being
8 boxed in.

9 You also want to make sure that you
10 don't violate other kinds of rules or you don't
11 escalate the person maybe with comments. For
12 instance, you wouldn't say your mother says you
13 are not going to work and you're doing X, Y and
14 Z and she is really angry with you. That's not
15 what you would say, you know. You want to be
16 able to protect their safety. If they have any
17 kind of weapon or any kind of thing that could
18 be used, you want them to put it down. You
19 don't come near them or negotiate or try to
20 subdue them until you've worked to get them to
21 relinquish whatever they have.

22 I have that happen a lot of times on
23 the phone. I'll have a patient call me and
24 say --

25 Q. Doctor, let me cut you off. What I

209

1 S. Vogel-Scibilia - by Mr. Hauck
2 want right now is just a brief explanation. I
3 understand what you've said. I don't need
4 examples unless you feel as if you haven't
5 fully explained your answer. I'm comfortable
6 with your answer, okay?

7 A. Okay.

8 Q. So I'm going to move on.

9 A. Okay.

10 Q. The next cardinal rule was
11 practicality.

12 A. Yes, practicality.

13 Q. Could you just briefly explain what
14 that cardinal rule is?

15 A. I mean, you have to be logical. You
16 have to know what is possible and what is not
17 possible. You have to be able to be flexible
18 and kind of roll with the situation. I mean,
19 you may come in with an understanding that
20 you're going to do X, Y and Z or you may decide
21 I've got other things to do and I'm going to do
22 this in 10 minutes, and you may end up having
23 to spend 40 minutes there, okay.

24 With mental health issues, there isn't
25 a speed to it, okay. You have to gather a lot

210

1 S. Vogel-Scibilia - by Mr. Hauck
2 of information. You've got to know what you're
3 going into. You have to be able to take some
4 time to negotiate things. It's just like when
5 you've got somebody up on a bridge or up on a
6 roof or, you know, got a gun to their head or
7 something like that, you have to be able to
8 take some time, and you have to realize the
9 plan you go in with may not be the plan you end
10 up with.

11 Q. Doctor --

12 A. And sometimes you have to do something
13 that may not even seem like it's going to work.
14 Do you know what I mean? But it's not going to
15 be harmful and it's worth a try and it will
16 work.

17 Q. Okay. To whom do these cardinal rules
18 apply?

19 A. I think for anyone who is working with
20 mentally ill people. This is the context of
21 what I talk about. These kinds of things. You
22 can see I just kind of spewed them off without
23 any effort. I wasn't really prepared to
24 specifically list those things, so if I can
25 spew them off with absolutely no thought at

223

1 S. Vogel-Scibilia - by Mr. Hauck
2 she doesn't understand. She is saying they are
3 bad questions.

4 THE WITNESS: That's correct.
5 Attorney Pennington is correctly describing
6 what I said.

7 MR. HAUCK: Okay, great. If you
8 don't understand, ask me to restate the
9 question, and I'll do that.

10 THE WITNESS: I understand every
11 question you've asked me.

12 MR. HAUCK: If you think the
13 question is bad, don't answer it.

14 MR. PENNINGTON: If you can
15 answer it without response, Doctor.

16 THE WITNESS: I think it would be
17 misleading for me to answer a bad question,
18 sir.

19 Q. Is it your opinion that the cardinal
20 rules may not apply in a situation involving
21 police and a person with a mental illness where
22 safety is of a concern?

23 MR. PENNINGTON: I'm going to
24 object to that. Police officers themselves may
25 create the safety problems.

224

1 S. Vogel-Scibilia - by Mr. Hauck

2 A. I'm not sure what kind of safety.
3 Could you give me an example of safety?

4 Q. Right now I'm just trying to find out
5 if it's possible that the cardinal rules won't
6 apply, and then once you answer that, if your
7 answer is yes, they might not apply, then we
8 can go into some examples. But right now I'm
9 just trying to find out if there could be a
10 situation where the cardinal rules might not
11 apply.

12 A. Where one or more of the cardinal rules
13 may not apply, yes.

14 Q. Could you explain to me an instance
15 where one or more of the cardinal rules may not
16 apply? Just give me one example.

17 A. I go back to the AK47. You have
18 anybody that has an AK47 and is shooting into a
19 crowd, then you have to stop the shooting with
20 the AK47. You may not have the ability to have
21 a conversation of the tenor that I explained.
22 You may not have the empathy that I previously
23 mentioned. You may have to disable the person
24 who is shooting into the crowd, but you should
25 use the least forceful means to accomplish what

225

1 S. Vogel-Scibilia - by Mr. Hauck
2 you need to accomplish for safety.

3 Q. Now, the opinions that you just gave,
4 what is the source of those opinions? Is it
5 derived from a law? What is it derived from?

6 A. I think it comes from common sense
7 practicality of working with people. I mean, I
8 understand police officers are trained to use
9 deadly force. I know that. But I think that
10 you have to use your deadly force judiciously.
11 That's why you have all the procedures and
12 protocols and inquiries that are done in law
13 enforcement in this day and age. I think that
14 those things have to be -- the rules that you
15 have have to be applied with sensitivity to the
16 fact that you have people who are disabled
17 under the American for Disabilities Act and
18 have special needs and, at times, need special
19 accommodations. But I acknowledge also that if
20 you have a significant safety issue, you may
21 not have the luxury of doing what I went
22 through when I went through the six cardinal
23 rules. I don't think any of that applies in
24 this case, but I would put that on the record.

25 Q. You said that your opinions as to what

226

1 S. Vogel-Scibilia - by Mr. Hauck
2 context the cardinal rules would apply is
3 derived from common sense. Are your opinions
4 derived from anything else?

5 A. Yes, I'm a professional who is an
6 expert witness in how to deal with people who
7 are agitated and have a mental illness,
8 either/or. I mean, I interact with people who
9 end up not having a mental illness and are just
10 agitated. I mean, I think if you needed to
11 have someone who is an expert witness in this
12 category, a psychiatrist that does this of the
13 nature of my qualifications would make this an
14 expert opinion about it.

15 MR. PENNINGTON: I just want to
16 interpose an objection. She was speaking
17 specifically of the example of the person with
18 the AK47.

19 THE WITNESS: Yes, that's true.

20 Q. Is it based on anything other than
21 common sense in your experience as a
22 psychiatrist?

23 MR. PENNINGTON: Objection. Are
24 you talking about the AK47 situation or
25 generally?

227

1 S. Vogel-Scibilia - by Mr. Hauck

2 MR. HAUCK: Generally.

3 A. I'm talking about common known rules of
4 engaging psychiatric patients that is well
5 founded in the literature that is leading to my
6 expert opinion.

7 Q. That's what I'm getting at.

8 A. Yes.

9 Q. What type of literature? Is it
10 psychiatric literature?

11 A. Well, psychiatric literature and
12 medical literature, yes.

13 Q. Anything else?

14 A. Well, you have issues around the ADA
15 and you also have general issues around common
16 law and common rules in our country and legal
17 rules within our country. I mean, there are
18 legal statutes about inappropriate treatment
19 and assault and other kinds of things. I mean,
20 you know the law better than I do, Attorney
21 Hauck, but there are certainly legal statutes
22 around not using deadly force in an
23 inappropriate way.

24 Q. Okay. Right now I'm just trying to get
25 at what sources of information certain of your

228

1 S. Vogel-Scibilia - by Mr. Hauck

2 opinions are derived from, and the opinions
3 that I'm curious about are the ones in which
4 you said that the cardinal rules would apply in
5 certain situations. Now you said that common
6 sense, your experience as a psychiatrist, and
7 then I think you said law; is that right?

8 A. No. I also said psychiatric and
9 medical literature.

10 Q. Okay. Anything else?

11 A. I mean, I think that probably covers
12 just about everything.

13 Q. Okay, great. Which laws are relevant?

14 A. I think that psychiatrists have a
15 general understanding of what is appropriate
16 laws in our country that all people subscribe
17 to, okay. The issues of, you know, your right
18 to your person, the basic Bill of Rights and
19 other kinds of things. I'm not going to debate
20 law with you I don't know, but we all
21 understand the Bill of Rights, and I
22 understand, and I'm sure you understand the
23 ADA, but I'm not going to argue legal
24 literature with you. I have a very basic
25 understanding of that compared to you, sir.

229

1 S. Vogel-Scibilia - by Mr. Hauck

2 Q. What aspect of the Bill of Rights
3 dictates when and when the cardinal rules do
4 not apply?

5 A. I don't understand that question. That
6 is way, way too broad.

7 Q. Okay. I was asking you about in what
8 circumstances the cardinal rules would apply,
9 and you gave me your opinion as to when and
10 when they don't apply. And then I asked you
11 what your opinions were based on, and one of
12 the things you told me was that your opinions
13 were based on the Bill of Rights; is that
14 right?

15 A. Yes.

16 Q. Okay. What aspects of the Bill of
17 Rights is your opinion based on?

18 A. That people have a right to life,
19 liberty and the pursuit of happiness and the
20 Constitution. I mean, you have a right to be
21 able to be safe in your person and your
22 surroundings without undue influence and
23 damage.

24 Q. Any other aspects of the Bill of
25 Rights?

230

1 S. Vogel-Scibilia - by Mr. Hauck

2 A. Well, the ADA gives you the same
3 protection --

4 Q. Bill of Rights, any other aspects of
5 the Bill of Rights?

6 A. Well, the whole thing of the Bill of
7 Rights. You have a right to be able to redress
8 for your complaints. You are not to be
9 incarcerated unnecessarily or arbitrarily. You
10 have a right to be able to have legal
11 representation and to have your feelings
12 transmitted. I mean, all those kinds of
13 things.

14 Q. Okay. Anything else other than the
15 ones that you mentioned?

16 A. No.

17 Q. Okay.

18 A. Not that I'm aware of. I mean, to be
19 able to recite the Bill of Rights at 9:00 on a
20 Sunday morning, I mean, we could probably go
21 into that with further depth if you want to
22 later, but I think that is pretty much what you
23 need.

24 Q. From those rights that you just
25 mentioned is how you've come to the expert

231

1 S. Vogel-Scibilia - by Mr. Hauck
2 opinion as to when and when the cardinal rules
3 do not apply?

4 A. No, there are other things that I told
5 you about.

6 Q. I'm sorry. That's a good point,
7 Doctor. The Bill of Rights that you just
8 mentioned, that is one of the things that has
9 helped you come to the conclusion as to when
10 and when the cardinal rules do not apply?

11 MR. PENNINGTON: I'm going to
12 object. I don't think she testified to that at
13 all.

14 MR. HAUCK: Okay. That's why I'm
15 asking her the question.

16 A. No.

17 MR. PENNINGTON: You are talking
18 about when and when they don't apply.

19 A. You started talking about the Bill of
20 Rights extensively after I mentioned it as a
21 factor. I mean, the main thing about when you
22 use techniques to be able to treat someone with
23 a mental illness, to be able to keep their ADA
24 rights intact and be able to keep the situation
25 safe for you and for other people, the basic

232

1 S. Vogel-Scibilia - by Mr. Hauck
2 information along that line is in the
3 psychiatric and medical literature, but you
4 don't ignore the Constitution and the Bill of
5 Rights and the ADA as well. I mean, you
6 know --

7 Q. I want to make sure that I understand
8 what you're saying. Is the Bill of Rights one
9 of the sources of information that has helped
10 you come to the conclusion as to when the
11 cardinal rules apply?

12 MR. PENNINGTON: I'm going to
13 object.

14 A. I don't think -- I think that the Bill
15 of Rights and the Constitution and the ADA are
16 something that are a factor in anything in this
17 regard, but I didn't review the Bill of Rights
18 before I looked at these issues because the
19 Bill of Rights and the Constitution are
20 something that we are all commonly living under
21 and aware of. I think that that's a given for
22 all situations. But, I mean, I don't think
23 that you could try to pull something
24 specifically out of the Bill of Rights and then
25 apply it looking and saying this is the

233

1 S. Vogel-Scibilia - by Mr. Hauck
2 deciding factor in using cardinal rules for
3 things.

4 Q. So the Bill of Rights isn't one of the
5 items that helped you come to the conclusion as
6 to when the cardinal rules apply?

7 A. No, it is, but it is not the main
8 issue. The main issue --

9 Q. You said it is just one of the sources.

10 A. It's one of the sources, yes.

11 Q. Got it.

12 A. But it's important. It's a very
13 important source. No one is going to say that
14 the Constitution and the Bill of Rights is not
15 one of the most defining things that we all
16 live under as Americans. I mean, come on now.
17 But on the other hand, the day-to-day
18 application of these kinds of things are things
19 that we all acknowledge and accept and live
20 with every day.

21 MR. PENNINGTON: We've been
22 through this.

23 THE WITNESS: Yeah, you know.

24 MR. PENNINGTON: Excuse me,
25 Doctor. Greg, we've been through this for the

234

1 S. Vogel-Scibilia - by Mr. Hauck
2 last 20 minutes. Do you have any other
3 questions?

4 MR. HAUCK: Yes.

5 MR. PENNINGTON: I think she
6 testified that the Bill of Rights is a factor
7 that she takes into consideration when the
8 cardinal rules may not apply. She said that at
9 least six or seven times.

10 MR. HAUCK: Are you done stating
11 your objection?

12 MR. PENNINGTON: Yes.

13 MR. HAUCK: Great.

14 Q. Doctor, have you ever had any classes
15 on the Bill of Rights?

16 A. Have I had any classes on the Bill of
17 Rights?

18 Q. Yes.

19 A. Yes.

20 Q. Could you identify those classes for
21 me?

22 A. I took a course in business law, and I
23 also took a course in civics, and one of my
24 interests is that I read history extensively
25 and the Bill of Rights and the American

235

1 S. Vogel-Scibilia - by Mr. Hauck
2 Constitution and the forming of our country
3 and, you know, issues of federalism versus
4 states' rights and other things, you know,
5 around the early period of our country I've
6 read about.

7 Q. Do you consider yourself an expert with
8 respect to the Bill of Rights?

9 A. No, definitely not.

10 MR. PENNINGTON: I interpose my
11 objection, please.

12 Q. Okay, one of the other things that you
13 mentioned that your opinions were derived from
14 with respect to when the cardinal rules applied
15 is the ADA; is that right?

16 A. Yes.

17 Q. Do you consider yourself an expert with
18 the respect to the ADA?

19 A. I think we already covered this.

20 MR. PENNINGTON: I interpose my
21 objection, please.

22 Q. What was your answer, Doctor?

23 A. I said that I have information that I
24 use in my everyday clinical practice where I
25 apply the ADA on a daily basis and that I know

236

1 S. Vogel-Scibilia - by Mr. Hauck
2 the ADA, what it entails, especially for
3 consumers with mental illness and other medical
4 disabilities and that I have especially a
5 practical clinical application in the community
6 for it.

7 Am I a law instructor who lectures on
8 the nuances of the ADA, no. Would I be
9 involved in doing research in the ADA in an
10 academic setting, no. I certainly wouldn't
11 want to get into an argument about the ADA with
12 someone who's made their life's work of it.

13 But I certainly spend a lot of time
14 educating people and discussing the ADA and
15 fighting for ADA rights for my patients in my
16 practice who end up needing it because there is
17 a lot of lack of understanding in the community
18 about the ADA.

19 Q. Do you know whether the ADA applies to
20 police officers?

21 A. I have an understanding that the ADA by
22 law applies to all people who have a mental
23 illness as well as a medical illness and that
24 applies to all people who interface with them.

25 Q. Okay. I don't want you to guess.

237

1 S. Vogel-Scibilia - by Mr. Hauck

2 A. No, I mean, that's how I've always --

3 Q. Okay.

4 A. That's been my opinion, and that's what
5 I've talked -- I mean, it applies to teachers,
6 it applies to employers, it applies to lawyers,
7 it applies to access to public facilities, it
8 applies to getting medical care.

9 MR. PENNINGTON: Doctor, if the
10 answer is yes, just give him yes, and he'll
11 follow-up.

12 THE WITNESS: Sorry.

13 A. Yes.

14 Q. Do you know whether the ADA applies to
15 police officers in the context of when police
16 officers are trying to arrest someone?

17 MR. PENNINGTON: Objection. Go
18 ahead and answer, Doctor.

19 A. I feel that it does, yes. Based on my
20 reading of ADA, yes.

21 Q. When you said based on your reading of
22 the ADA, do you mean the reading of the statute
23 itself?

24 A. Yes.

25 Q. Have you read anything else with

238

1 S. Vogel-Scibilia - by Mr. Hauck
2 respect to the ADA that has helped you come to
3 that conclusion?

4 A. I read a lot in the psychiatric
5 literature about the ADA. I haven't read
6 anything in legal literature about the ADA.
7 But I would use what I've read in the
8 psychiatric literature to base that opinion,
9 yes.

10 Q. Okay. Doctor, could you turn to page 2
11 of your report?

12 A. Sure.

13 Q. Now the first full sentence at the top
14 there says these rules were not followed both
15 by Holy Spirit and by the West Shore Police
16 Department. Do you see that?

17 A. The second page of my report?

18 MR. PENNINGTON: At the top,
19 first sentence.

20 A. Yes, I see it. These rules were not
21 followed both by Holy Spirit and the West Shore
22 Police Department, yes.

23 Q. Now, when you say these rules were not
24 followed, I'm just going to focus on the West
25 Shore Police Department. Okay?

271

1 S. Vogel-Scibilia - by Mr. Hauck
 2 in a protective stance. Hart was protecting
 3 his officer who was down, and he shot the man
 4 five times.
 5 Q. Okay.
 6 A. All six things were violated by Hart
 7 too in this whole issue as well.
 8 Q. One of the things that you talk about,
 9 Doctor, was Officer Hart's failure to have less
 10 lethal force.
 11 A. Yes.
 12 Q. Do you know if Officer Hart is required
 13 as a police officer to have less lethal force
 14 than what he had?
 15 MR. PENNINGTON: In the context
 16 of the 302 or what context?
 17 MR. HAUCK: In this context.
 18 A. Certainly there are other things
 19 available and certainly people look at using
 20 less lethal means in circumstances. The idea
 21 of whether or not immobilizing devices should
 22 be used on airplanes with terrorist situations
 23 is certainly available and around. What the
 24 laws are around police officers and what they
 25 need to carry, I really don't know.

273

1 S. Vogel-Scibilia - by Mr. Hauck
 2 you that that escalated the situation. That's
 3 my statement.
 4 Q. Right. I understand that.
 5 MR. PENNINGTON: Let her answer
 6 the question.
 7 Q. I'm asking you if you know the police
 8 regulations, what police regulations?
 9 A. No.
 10 Q. Okay. Are you familiar with what the
 11 police regulations say with respect to what a
 12 police officer should do if one of their fellow
 13 officers had been shot?
 14 A. No.
 15 MR. PENNINGTON: Yes or no?
 16 THE WITNESS: I already said no,
 17 but you didn't hear me because of the banging
 18 and the background static.
 19 Q. Are you familiar with what police
 20 regulations say that a police officer should do
 21 when he's in fear of his life?
 22 A. No.
 23 Q. All right. Let me focus your attention
 24 to Page 2 of your report, the last sentence of
 25 the first paragraph on that page. It starts

272

1 S. Vogel-Scibilia - by Mr. Hauck
 2 Q. Okay.
 3 A. But I can tell you that clearly less
 4 lethal means is a common sense kind of thing
 5 with dealing with people in general and
 6 especially with people with mental illness, and
 7 if there had been less lethal means available
 8 to these police officers and had they had
 9 training and had they not acted so recklessly,
 10 though I acknowledge it's through their own
 11 ignorance, then this whole situation, this
 12 whole regrettable avoidable situation for all
 13 three people, Officer Berresford, Officer Hart,
 14 and Ryan Schorr could have been avoided.
 15 Q. Another thing that you talked about was
 16 Officer Hart striking Ryan Schorr with the
 17 baton.
 18 A. Yes.
 19 Q. Are you familiar with police
 20 regulations that dictate what a police officer
 21 should do when one of his fellow officers is
 22 under attack?
 23 A. I'm not aware of the specific things.
 24 All I'm commenting on -- I understand why
 25 Officer Hart did what he did. I'm just telling

274

1 S. Vogel-Scibilia - by Mr. Hauck
 2 with he had opportunity, do you see that?
 3 A. One second. Yes.
 4 Q. I'm going to read that sentence. It
 5 says he -- I think referring to Ryan Schorr --
 6 A. Yes.
 7 Q. -- had an opportunity to shoot firearms
 8 and instead struck the officers with them
 9 suggesting he had no clear lethal intent.
 10 A. Yes.
 11 Q. Do you see that?
 12 A. Yes.
 13 Q. Do you know if Ryan Schorr shot either
 14 one of the officers?
 15 A. I see no evidence in the record that he
 16 intentionally shot anyone other than they were
 17 fighting over the gun and Officer Berresford
 18 perceived that him getting his finger on the
 19 trigger is what caused the gun to go off. In a
 20 situation like that, you can't really say that
 21 the patient was willfully trying to shoot the
 22 police officer. Okay? And there is no doubt
 23 that they struggled over the gun. But if the
 24 patient was trying to shoot the police officer
 25 in the beginning when they first were